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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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11 HO RIM KAM,

12 Petitioner,  
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14 v.

15 MARTIN LUTHER KING, JR.-MARCUS  
GARVEY SQUARE COOPERATIVE BOARD  
OF DIRECTORS,  
16

17 Respondent.  
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Case No.: C 07 4414 (SBA)

**[PROPOSED] ORDER GRANTING  
PETITIONER'S MOTION FOR  
REIMBURSEMENT OF  
ATTORNEYS' FEES  
(NORTHERN DISTRICT LOCAL  
RULE 54)**

The Honorable Sandra B. Armstrong

Date: N/A

Time: N/A

Court: Courtroom 3, 3<sup>rd</sup> Floor

19 The motion of Petitioner Ho Rim Kam for an order granting Petitioner's Motion for  
20 Reimbursement of Attorneys' Fees came on for hearing before this Court with Heller  
21 Ehrman LLP appearing as attorney for Petitioner and Kaufman, Dolowich & Voluck LLP  
22 appearing for Respondent. Notice of the Motion was properly made.

23 **I. Background**

24 Petitioner Ho Rim Kam filed his State Court Petition for a Peremptory Writ of  
25 Mandamus ("Petition" or "Application") alleging that Respondent Martin Luther King, Jr.-  
26 Marcus Garvey Square Cooperative Board of Directors ("Board") violated its Bylaws by  
27 improperly removing and excluding Mr. Kam as a Director and the Treasurer of the Board.  
28 The action therefore arose under the California Code of Civil Procedure, Section 1085(a).

1 Kam raised two issues in his Petition: (1) whether the Board's determination that he had  
2 become "delinquent" in his rent ("carrying charges") for more than thirty days—a simple  
3 fact issue, and not a "federal claim"—was unsupported and therefore flawed; and (2)  
4 whether the vote to remove him was properly conducted under the Bylaws and California's  
5 Corporations Code.

6 Respondent is a California non-profit corporation governed by California law. It  
7 may only remove directors and officers according to its Bylaws and the California  
8 Corporations Code. As such, the only legal issue raised in this case was whether the Board  
9 acted contrary to its adopted Bylaws and thereby violated California law in removing and  
10 excluding Petitioner from his position as Director and Treasurer of the Board.

11 On October 15, 2007, the Court remanded this action, stating, "The application for  
12 mandamus does not assert any federal claim, rely upon any provision of federal law or a  
13 federal regulation, or assert a claim against a federal entity." Moreover, the Court found  
14 that "[n]o substantial federal interest is implicated."

## 15 **II. Legal Standard**

16 In remanding this case to state court, this Court held that Respondent's removal was  
17 objectively unreasonable and that Respondent is liable to Petitioner for attorneys' fees under  
18 28 U.S.C. § 1447.

## 19 **III. Analysis**

20 Due to the complex nature of the case and the significant activity on multiple  
21 motions following Respondent's removal, Petitioner's requested fees are reasonable.

22 The combination of Respondent's superficial Notice of Removal and its lengthy and  
23 ill-defined Opposition to Motion to Remand significantly increased the amount of attorney  
24 time required to defend against Respondent's nebulous basis for removal.

25 Additionally, Respondent's strategy following removal actually maximized costs to  
26 all parties involved. This strategy is exemplified by Respondent's refusal to stipulate to 1)  
27 shorten time for hearing Petitioner's Motion to Remand, and 2) postpone the hearing on  
28 Respondent's Motion to Dismiss.

1 The Court finds that Petitioner incurred a total of \$44,157.00 in attorneys fees as a  
2 result of Respondent's objectively unreasonable removal.

3 **IV. Conclusion**

4 After full consideration of the moving papers, the Court grants Petitioner's Motion  
5 for Reimbursement of Attorneys' Fees. The Court finds that Respondent's objectively  
6 unreasonable removal of this action to federal court required Petitioner to expend attorney  
7 resources totaling \$44,157.00. Additionally, the Court finds that removal was a tactical  
8 decision made by Respondent's counsel and therefore holds counsel liable for the fees in  
9 their entirety. It is therefore ORDERED that Respondent's counsel, Kaufman, Dolowich &  
10 Volock LLP pay Petitioner's counsel, Heller Ehrman LLP, the full \$44,157.00 it is owed.

11 DATED: \_\_\_\_\_

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13 JUDGE OF THE UNITED STATES  
14 DISTRICT COURT  
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